

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM VERA, aka Memo Vera,
Plaintiff,
v.
WARDEN, et al.,
Defendants.

1:22-cv-00893-ADA-CDB (PC)

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS TO DISMISS
THIS ACTION WITHOUT PREJUDICE**

(Doc. 44)

**ORDER ON PLAINTIFF'S MOTION
FILED AUGUST 15, 2023**

(Doc. 49)

Plaintiff William Vera, *also known as* Memo Vera, is a state prisoner proceeding pro se and *in forma pauperis* in a civil rights action pursuant to 42 U.S.C. § 1983.

I. RELEVANT PROCEDURAL BACKGROUND

On June 30, 2023, this Court issued Findings and Recommendations to dismiss this action for Plaintiff's failure to obey court orders and failure to prosecute. (Doc. 44.) Specifically, the Court recommended dismissal for Plaintiff's failure to timely file a first amended complaint. (*Id.* at 3.) Plaintiff was advised objections to the Court's findings were to be filed within 14 days. (*Id.* at 4-5.)

Plaintiff filed a "Motion to Amend the Findings F.R.C.P. 52 60(b)" on July 13, 2023 (Doc. 45) and on July 17, 2023, he filed a "Motion to Amend Findings F.R.C.P. 52" (Doc. 46).

On July 20, 2023, this Court issued its Order Regarding Plaintiff's Filings of July 13, 2023, and July 17, 2023. (Doc. 47.) Relevant here, Plaintiff was granted one final opportunity to

1 comply with the Court's orders. In particular, he was ordered to file a first amended complaint
2 within 14 days and advised that no further extensions of time would be granted. (*Id.* at 3.)

3 On August 7, 2023, Plaintiff filed his first amended complaint. (Doc. 48.)

4 Pending before the Court Plaintiff's filing no August 15, 2023, of a document titled
5 "Motion to request filing of served papers F.R.C.P. 5." (Doc. 49.)

6 **II. DISCUSSION**

7 Because Plaintiff timely filed¹ a first amended complaint, the Findings and
8 Recommendations to dismiss this action will be vacated. Plaintiff's first amended complaint will
9 be screened in due course. 28 U.S.C. § 1915A. The undersigned carries a heavy caseload and
10 delays are unavoidable. Until the Court has had an opportunity to screen Plaintiff's first amended
11 complaint to determine whether he has stated any cognizable claim, no further motions or
12 requests should be made of the Court.

13 Plaintiff's motion filed August 15, 2023, cites to Rule 5 of the Federal Rules of Civil
14 Procedure and this Court's Local Rule 133 in support of his request. Rule 5 concerns Serving and
15 Filing Pleadings and Other Papers. Local Rule 133 concerns the Filing and Contents of
16 Documents. Here, Plaintiff seeks to file approximately 52 pages of exhibits he has numbered 6
17 through 9. (*See* Doc. 49.) Neither Rule 5 nor Local Rule 133 require the Court to file Plaintiff's
18 exhibits.

19 As Plaintiff has been previously advised (*see* Doc. 41 at 11-12 [First Screening Order]),
20 this Court will not serve as a repository for Plaintiff's evidence.

21 Evidence should not be submitted to the Court until this action reaches an appropriate
22 stage in litigation for the submission of evidence, such as in response to a motion for summary
23 judgment, at trial, or when specifically requested by the Court. Further, if and when this action
24 reaches an appropriate stage in the litigation for the submission of evidence, Plaintiff will not be
25 able to refer to exhibits attached to his complaint as evidence or evidence inappropriately
26 submitted to the Court for filing. Evidence must be submitted at the proper time and under the
27

28 ¹ Plaintiff signed and dated his first amended complaint on August 1, 2023. (Doc. 48 at 14.)

proper procedures. Attaching exhibits to a complaint or a motion such as the instant motion is not the proper procedure for admitting evidence for the purpose of proving Plaintiff's allegations. Plaintiff is cautioned that improperly sending evidence to the Court may result in the evidence being lost or destroyed. Additionally, the Court will not return the exhibits to Plaintiff unless Plaintiff provides a postage paid return envelope. *See* Local Rule 101.

Because Plaintiff's motion seeks to file evidence in support of his first amended complaint, and because it is inappropriate at this stage of the litigation, his motion will be denied.

III. CONCLUSION AND ORDER

For the reasons given above, **IT IS HEREBY ORDERED** that:

1. The Findings and Recommendations (Doc. 44) issued June 30, 2023, are **VACATED**;
and
2. Plaintiff's motion or request (Doc. 49) filed August 15, 2023, is **DENIED**.

Plaintiff is advised no further motions or requests will be entertained until the Court has had an opportunity to complete the required screening of his first amended complaint.

IT IS SO ORDERED.

Dated: **August 16, 2023**


UNITED STATES MAGISTRATE JUDGE